The opinion being written in support of the decision being entered today is <u>not</u> binding precedent of the Board.

Paper 200 6

By:

Trial Section Merits Panel

Box Interference

Washington, DC 20231 Tel: 703-308-9797 Fax: 703-305-0942 Filed: February 3, 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

FFICE MAILED

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

FEB 3 - 2003

PAT. & T.M. OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES

DONALD A. YOUNG,
MICHAEL K. O'BANION and VIRGINIA D. WINN

Junior party, (Application 08/487,752)

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WANDA A. CROMLISH, BRIAN P. KENNEDY, GARY O'NEILL, PHILLIP J. VICKERS, ELIZABETH WONG and JOSEPH A. MANCINI

> Senior party, (Patent 5,543,297 and Reissue Application 09/731,632)

Patent Interference No. 104,289

Before: SCHAFER, SPIEGEL and MEDLEY, Administrative Patent Judges.

SPIEGEL, Administrative Patent Judge.

JUDGMENT PURSUANT TO 37 CFR § 1.662

Junior "Party Young hereby abandons the contest of the interference and requests entry of adverse judgment" (Paper 199). Accordingly, it is

ORDERED that judgment on priority as to Count 1 (Paper 188, p. 2), the sole count in the interference, is awarded against junior party DONALD A. YOUNG, MICHAEL K. O'BANION and VIRGINIA D. WINN;

FURTHER ORDERED that junior party DONALD A. YOUNG, MICHAEL K. O'BANION and VIRGINIA D. WINN is not entitled to a patent containing claims 1-9, 12-22, 25-28, 30, 32-38 and 58 (corresponding to Count 1) of application 08/487,752;

FURTHER ORDERED that a copy of this decision (Paper 200) and of the ORDER REDECLARING INTERFERENCE mailed November 21, 2002 (Paper 188) be given paper numbers and entered in the administrative record of Young application 08/487,752, of Cromlish U.S. Patent 5,543,297 and of Cromlish reissue application 09/731,632; and

FURTHER ORDERED that if there is a settlement agreement which has not been filed, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

RICHARD E. SCHAFER
Administrative Patent Judge

CAROL A. SPIEGEL

Administrative Patent Judge

BOARD OF PATENT APPEALS AND INTERFERENCES

SALLY C. MEDLEY

Administrative Patent Judge

104,289 (via fax and first class mail):

Counsel for Cromlish (real party in interest MERCK FROSST CANADA INC.):

Eugene C. Rzucidlo, Esq. Albert L. Jacobs, Jr., Esq. Gerard F. Diebner, Esq. Joseph M. Manak, Esq. GRAHAM & JAMES LLP Intellectual Property Group 885 Third Avenue New York, NY 10022-4834 Tel: 212-848-1000

Fax: 212-848-9590

Counsel for Young (real party in interest UNIVERSITY OF ROCHESTER):

William P. Berridge, Esq. Melanie L. Mealy, Esq. Steven J. Prewitt, Esq. OLIFF & BERRIDGE 227 S. Washington St. Suite 500 Alexandria, VA 22314 Tel: 703-836-6400

Fax: 703-836-2787

Filed on behalf of:

By:

Parties YOUNG

William P. Berridge

Melanie L. Mealy

OLIFF & BERRIDGE, PLC 277 S. Washington St., Suite 500 Alexandria, Virginia 22314 Telephone: (703) 836-6400

Fax: (703) 836-2787

UNITED STATES PATENT AND TRADEMARK OFFICE (Administrative Patent Judge Carol A. Spiegel)

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

DONALD A. YOUNG, MICHAEL K. O'BANION and VIRGINIA D. WINN

Junior party, (Application 08/487,752)

V.

WANDA A. CROMLISH,
BRIAN P. KENNEDY, GARY O'NEILL, PHILIP J. VICKERS,
ELIZABETH WONG and JOSEPH A. MANCINI

Senior Party, (Patent 5,543,297 and Reissue Application 09/731,632)

Patent Interference No. 104,289

YOUNG ABANDONMENT OF THE CONTEST

2003 JAH 31 MI II: 02

Interference No. 104,289

Young v. Cromlish

Without conceding priority as to the count or unpatentability as to any claim of the Young application in interference, Party Young hereby abandons the contest of the interference and requests entry of adverse judgment.

Respectfully submitted,

William P. Berridge, Reg. No. 30,024

Melanie L. Mealy, Reg. No. 40,085

Interference No. 104,289

Young v. Cromlish

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this paper (and any papers referred to herein as being attached or enclosed) is today being sent by facsimile to Eugene C. Rzucidlo, Esq., lead counsel for Party Cromlish, at the address of record.

January 31, 2003